IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IF OR IS NOT APPROVED FOR REPORTING
Chapter VIII, Rule 32(2) (b)
Description of case

Appeal From Order No. 412 of 2004 **Decided on: 23rd March, 2006**

A.F.R. (Approved for Reporting)

Not Approved for Reporting

23.03.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 412 of 2004

Neeraj Kumar Goyal
S/o Sri Triloki Nath
R/o Quarter No.9,
Rishikul Vidhya peeth,
Haridwar, District Haridwar.

……. Appellant

Versus

Sri Krishan Lal Arora
S/o Sri Ram Asrey,
R/o Brahampuri, Haridwar
Presently residing at House No. 784/7
Govind Puri, New Dehli.

…… Respondent

Mr. Pankaj Miglani, learned counsel for the appellant.
Mr. Lok Pal Singh, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 299 of the Indian Succession Act, 1925, is directed against the judgment and order dated 25.09.2004, passed in Succession Suit No. 01 of 2001 by learned Addl. District Judge / F.T.C. VII, Dehradun.

2) Brief facts of the case, are that appellant Neeraj Kumar Goyal is real brother of his deceased sister Sushma Goyal, who died on 18.11.1990. At the time of her death she was employed with Indian Drugs and Pharmaceuticals Ltd., Rishikesh. As per appellant's case, she left behind her father Triliki Nath Goyal and two sisters Sashibala and Veerbala, apart from the appellant. Mother of the deceased Sushma Goyal had already died on 17.06.1990. The appellant sought succession certificate in respect of the gratuity, group

insurance etc. amounting to Rs. 67,082/- due to the deceased. Initially, the application of the appellant, which was registered as case No. 222 of 1991, was allowed on 12.02.1993 and succession certificate was issued in his name. But it appears that respondent Krishan Lal filed simultaneously another application before the Civil Judge, Haridwar, for succession certificate, claiming himself to be the husband of the deceased. Said case was registered as Misc. Case No. 28 of 1991, in which the present appellant also filed the objections. After recording evidence and hearing the parties, learned Civil Judge, Haridwar disposed of the application rejecting the application of respondent Krishan Lal on 05.08.1994 on the ground that succession certificate in respect of the same amount has already been issued by the Dehradun court. (It is pertinent to mention here that Indian Drugs and Pharmaceuticals Ltd., Rishikesh is situated within District Dehradun while Sushma Goyal breathed her last at Haridwar). However, learned Civil Judge, Haridwar, while rejecting the application did find that the respondent Krishan Lal was husband of the deceased. Thereafter, the respondent Krishan Lal preferred an appeal against the order dated 05.08.1994 of leaned Civil Judge, Haridwar. And, said appeal (Misc. Civil Appeal No. 46 of 1994) was also dismissed. Meanwhile, respondent Krishan Lal moved an application before the court at Dehradun for cancellation of the succession certificate issued in favour of the present appellant. Said Misc. Case was registered as Misc. Case No. 28-A of 1993. The court at Dehradun, after hearing the parties cancelled the succession certificate vide its judgment and order dated 10.07.1997. Consequently, the Misc. Case No. 222 of 1991 was revived and in view of

Section 295 of the Indian Succession Act, 1925 the same was re-registered as Succession Suit No. 01 of 2001. In the objections the respondent raised the plea that he was the husband of the deceased Sushma Goyal and as such entitled to the succession certificate.

3) On the basis of the pleadings, the trial court framed following issues:

1. *Whether, the deceased Sushma Goyal was legally wedded wife of Krishan Lal,, if so, its effect?*
2. *To what relief, if any, the applicant is entitled?*

4) After recording evidence and hearing the parties, the trial court dismissed the application of Neeraj Kumar (present appellant), brother of the deceased, and allowed the application of the respondent Krishan Lal (alleged husband) for succession certificate in his favour. Aggrieved by the same, this appeal has been filed by Neeraj Kumar Goyal, brother of the deceased.

5) I heard counsel for the parties and perused the record.

6) Admittedly, deceased Sushma Goyal was employed with Indian Drugs and Pharmaceuticals Ltd. at Rishikesh. This is also not disputed between the parties that she died on 18.11.1990. It is also admitted fact that Neeraj Kumar is brother of the deceased. The dispute between the parties is confined to the fact, whether, respondent Krishan Lal is husband of the deceased and is he entitled to the succession certificate, and is the appellant not entitled to the succession certificate.

7) Appellant Neeraj Kumar has filed an affidavit dated 13 / 22 November, 2002, in which it has been stated that Sushma Goyal was his real sister. It is also stated that she remained unmarried till her death. It is further stated that she never married on 02.04.1987 or on any other date to anyone. It is further started in the affidavit that last rites of the deceased were performed by the deponent (Neeraj Kumar Goyal). Lastly, it is stated in the affidavit that the respondent is Arora by caste and has nothing to do with the family of the deceased. The deponent is orally cross examined as P.W. 1 after the succession case was registered as suit.

8) In reply to the above evidence, D.W. 1, Krishan Lal has stated on oath that Sushma Goyal was his wife to whom he married on 02.04.1987 in Arya Samaj Temple, Haridwar. It is admitted to him that Sushma Goyal died on 18.11.1990 and there was no issue out of the wedlock. D.W. 1, Krishan Lal has claimed himself to be the sole successor of the properties of the deceased. However, in the cross examination, this witness has admitted that he is Arora by caste, while his wife was Goyal. He has further admitted in the cross examination that he belongs to Rohtak and he was divorcee at the time of marriage with the deceased. He has further stated that he got divorce from his first wife in 1985. That being so, the alleged marriage with the deceased Sushma Goyal was second marriage of respondent Krishan Lal. It has also been admitted by him that for only couple of months he stayed at Haridwar. D.W. 1, Krishan Lal further admits that after death of Sushma Goyal he has married third time with one Manju, who is Sub Inspector with Delhi Police and some litigation is also going on under Section 9

of the Hindu Marriage Act, 1955 between them. In support of his case, the respondent has got examined D.W. 2, Bharat Singh, an official of Indian Drugs and Pharmaceuticals Ltd. where Sushma Goyal was employed. This witness has stated that service record of Sushma Goyal is not available with the Company, but he had brought one O.P.D. patient book in which name of husband of Sushma Goyal is mentioned as 'Krishan Lal Goyal'. It is surprising that Krishan Lal who admits that he is Arora by caste was mentioned as Goyal in the O.P.D. book. D.W. 1, Krishan Lal has stated that he got married with the deceased in Arya Samaj Temple, Haridwar, but he filed to file any certificate of marriage, from the Arya Samaj Temple, Haridwar. In this regard, his explanation is that he asked the Arya Samaj people to give him the certificate but they avoided issuing the same.

9) It is argued on behalf of the respondent that the finding as to the marriage with the deceased is final in view of the proceedings terminated before Civil Judge, Haridwar on 05.08.1994, against which the Misc. Civil Appeal No. 46 of 1994 was also dismissed on 31.01.1996. Though, he cannot get the succession certificate as the same has already been issued to Neeraj Kumar Goyal but as to the fact of his marriage the finding in final. To this extent this Court finds substance in the submission of learned counsel for the respondent that the finding of Civil Judge, Haridwar is final. Though the respondent failed to get the succession certificate, but finding as to the fact that he was husband of the deceased is final as against the present appellant Neeraj Kumar as he was also party in said proceedings. However, said finding is not given in any regular proceedings of suit but

nature of proceedings under Section 372 of the Indian Succession Act, 1925, are summary in nature. Also, the copy of the death certificate of Mrs. Sushma Goyal shows that name of her husband was Krishan Lal. It has also come on the record that the report as to the death was made by the present appellant himself, wherein he disclosed name of the husband of the deceased as Krishan Lal. The said information given to the Nagar Palika Haridwar by Neeraj Kumar, brother of the deceased, is an admission against him. And, as such, the trial court has rightly opined that Neeraj Kumar cannot say that his sister was unmarried one. During arguments learned counsel for the appellant stated that even if Sushma Goyal is found to be a married lady, respondent is not that Krishan lal with whom she got married. This fact is not pleaded by applicant / appellant, Neeraj Kumar before the trial court disputing the identity, as such, the submission made before this Court in this regard cannot be accepted.

10) However, merely for the reason that the respondent Krishan Lal has been prima facie able to show that he was husband of the deceased, does not necessarily entitle him to the succession certificate under the proceedings under Indian Succession Act, 1925. In this connection, sub-section (4) of Section 373 of the aforesaid Act is relevant to be quoted here:

> *"(4) When there are more applicants than one for a certificate and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants."*

11) In ***Smt. Krishna Pyari Vs. Govind Mishra reported in A.I.R. 1992 M.P. pg. 145,*** also deceased was a married woman in Government service, but she died three days after the marriage with her husband. In that case also, the Madhya Pradesh High Court, keeping in view of the spirit of the Section 373(4) of the Indian Succession Act, 1925 granted succession certificate to the mother as against the husband of the deceased. In the present case also, though the husband has a preferential right under Section 15 of the Hindu Succession Act, 1956 as against the brother, but considering the circumstances that the marriage with the husband krishan Lal was a short lived marriage, and thereafter he got married third time to one Manju of Delhi, it is not just and proper in the fitness of the thing to grant succession certificate to such person. It is further pertinent to mention here that the deceased had no issue from the respondent Krishan Lal.

12) Attention of this Court was drawn on behalf of the respondent to Section 15 of the Hindu Succession Act, 1956, which provides that when a female Hindu dies intestate her property devolves:

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter and the husband);
(b) secondly, upon the heirs of the husband;
(c) thirdly, upon the mother and father;
(d) fourthly, upon the heirs of the father; and
(e) lastly, upon the heirs of the mother.

13) But, succession and inheriting property of a person is different than granting of succession certificate to one of the

applicants. This Court has no hesitation in observing that in the matter of the issuance of succession certificate, it only absolves the third party from discharging it from payment of dues of the deceased, and merely for the reason that the succession certificate is issued in favour of one person, it doesn't deprive the other persons of their shares, if they are the real heirs entitled to succession. They can claim their share from the person in whose favour succession certificate is issued, and who received the payment. However, for that purpose, such person is required to move to the competent civil court for declaration of his rights or recovery of money.

14) For the reasons as discussed above, this Court is of the opinion that the trial court has erred in issuing succession certificate to such a person who was not a nominee of the deceased and nor was living with the deceased at the time of her death, nor appears too be a person entitled by his conduct to a succession certificate in the facts and circumstances of the case, as mentioned above. Therefore, the appeal deserves to be allowed. The appeal is allowed. The impugned judgment and order dated 25.09.2004 of the trial court is set aside. The application of the respondent for succession certificate stands rejected. The application for succession certificate in favour of the appellant is allowed. The trial court is directed to issue succession certificate, accordingly. No order as to costs.

(Prafulla C. Pant, J.)

Dt. March 23, 2006
H.Negi